

“PROMOTING THE ROME STATUTE SYSTEM AND ENHANCING THE EFFECTIVENESS OF THE ICC”

EVALUATION OF KNOWLEDGE AND EXPERTISE IN INTERNATIONAL CRIMINAL JUSTICE IN NEPAL

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Avocats Sans Frontières is an international nongovernmental organisation. Its mission is to independently contribute to the creation of fair and equitable societies in which the law serves society's most vulnerable groups. Its aim is to contribute to the establishment of institutions and mechanisms allowing for independent and impartial access to justice, capable of assuring legal security, and able to guarantee the protection and effectiveness of fundamental rights (civil and political, economic and social).

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TABLE OF CONTENT

Aknowledgement.....	3
List of acronyms/abbreviations.....	5
1. Introduction to the project	6
1.1. Objectives of the baseline	6
1.2. Methodology	7
1.3. ASF's partner, the informal sector service centre	7
1.4. Limitations.....	7
Part I: the International Criminal Court in Nepal. Analysis of the context.....	8
I. Context.....	8
II. Judicial situation	8
a. Formal justice	8
b. The bar	10
III. Treaty Act of Nepal, 1990: steps required for ratification	11
IV. Necessary legislative reform	12
V. Initiatives undertaken	14
VI. Opportunities for the ratification.....	15
VII. Obstacles to the ratification	16
Part II: Survey of the knowledge of targeted groups and beneficiaries of the Rome Statute System and the ICC	17
I. Results of the questionnaires	17
II. Analysis of the results.....	22
Conclusions and recommendations	25
Annexes	27
Annex 1. Questionnaires sent to lawyers	27
Annex 2. Questionnaire for mps and other stakeholders	32
Annex 3. Terms of reference.....	36
Annex 4. Number of activities	38

LIST OF ACRONYMS/ABBREVIATIONS

ASF	Avocats Sans Frontières
CPA	Comprehensive Peace Accord
ICC	International Criminal Court
INSEC	Informal Sector Service Center
NCICC	National Coalition for the International Criminal Court
NBA	Nepal Bar Association
NDC	National Dalit Commission
NJA	National Judicial Academy
NHRC	National Human Rights Commission
NWC	National Women Commission
UPR	Universal Periodic Review

1. INTRODUCTION TO THE PROJECT

Avocats Sans Frontières (ASF) is a non-governmental organization with a mission to contribute to the building of just and equal societies, where the law serves the needs of the most vulnerable groups and individuals. It has permanent missions in Burundi, Rwanda, Democratic Republic of the Congo, Uganda, Tunisia and Nepal, and implements projects in Chad, Israel/Palestine, East Timor and in Colombia, in partnership with its partner ASF Canada.

ASF is actively engaged in supporting the effective functioning and independence of the Court through advocacy activities, regular consultations, research and publications in relation to the ICC and international criminal law.

In November 2010, ASF launched the global project entitled *Promoting the Rome Statute System and enhancing the effectiveness of the ICC*. The objective of the project is to promote the effectiveness of the system established by the Rome Statute and thereby contribute to a greater accountability for flagrant human rights violations and redress for victims.

The activities proposed for Nepal are aimed at reinforcing the capacity of legal professionals and support advocacy efforts for the ratification of the Rome Statute and the enactment of appropriate national legislation. The specific activities consist of training workshops for lawyers on the Rome Statute and on international criminal law, initiating a general national network of lawyers and provide technical support for the advocacy activities of the network and other civil society actors.

In preparation for the launch of the project, ASF conducted an informal survey aimed at identifying the role, needs and priorities of the legal profession in Nepal through questionnaires completed by members of different district bar associations. ASF hired a consultant, INSEC, in order to complement the survey with informal consultations with other stakeholders including civil society, representatives of the justice sector and parliamentarians, and to conduct a preliminary analysis of the data.

1.1. OBJECTIVES OF THE BASELINE

- Develop an overview of legislative and/or judicial developments in relation to the Rome Statute.
- Identify the legislative reforms that may be necessary in the area of administration of justice and to meet Nepal's international obligations in the human rights field.
- Identify the national and international actors involved in the capacity-building efforts, awareness raising and advocacy activities in relation to the ratification of the Rome Statute, the fight against impunity for the most serious crimes and making reparations available for victims.
- Identify the strengths and weakness of past activities and future plans.
- Incorporate the results of the analysis in a report to be discussed in during a consultation meeting with stakeholder and target groups to be organised.
- Use the final results of the study to draw up bench marks and make adjustments, if necessary, to existing plans and strategies for implementation of specific activities.

1.2. METHODOLOGY

The methodology adopted to establish the baseline included:

- Documentary analysis of publications and relevant national legislation or draft legislation.
- Interviews and meetings with the main actors in this field such as NGOs, national justice experts, justice sector officials, parliamentarians and international actors.
- Analysis of the surveys completed by legal professionals

1.3. ASF'S PARTNER, THE INFORMAL SECTOR SERVICE CENTRE

Informal Sector Service Centre (INSEC) is a leading human rights organization of Nepal that has been working for the protection and promotion of human rights through social justice in Nepal for around two decades. It is continuously campaigning and advocating against violation of human rights on a local, national and international level. INSEC has been playing an influential and leading role to protect and promote human rights through lobbying and advocacy work at different levels. It has been working with different national and international networks and coalitions. INSEC has a presence in all 75 districts of Nepal. In all the five development regions it has its regional offices, 24 district offices and district representatives in each of 75 districts.

INSEC has been coordinating the National Coalition for the ICC since 2001. The purpose of the formation of the coalition is to act on different platforms, such as campaigning in support of ICC, advocating/lobbying in favour of the Court in Nepal, to sensitize and make the concerned authorities of Nepal aware to accede the Rome Statute of the ICC, to bring the needs of the court to the attention of the members of the society, NGOs, academics, lawyers, the Bar Association and other individuals in the coalition network. Up to date it has conducted a number of (see annex 4) different events to apply pressure on the accession of the Rome Statute. Educational and promotional campaigns, capacity building activities and advocacy and lobbying are major strategic approaches adopted by the coalition.

1.4. LIMITATIONS

The study is based on a small sample size that may not be truly representative of all stakeholders across the country. While this does not significantly affect the validity of the study's findings, it suggests that some issues in the study may require further investigation to obtain a more comprehensive understanding of the overall situation.

PART I: THE INTERNATIONAL CRIMINAL COURT IN NEPAL. ANALYSIS OF THE CONTEXT

I. CONTEXT

Nepal suffered from a conflict which took place between 1996 and 2006. Over that period more than 13,000 people were killed and many others disappeared¹. Peace was reached through a multi-party agreement signed on November 21st 2006. In the name of political ideology, the Nepal army, Nepal Police and the Maoists all committed crimes to be found in the Rome Statute², not ratified yet by the Nepalese authorities. The government has not been held accountable for the deaths and most political leaders misunderstand the effect of the Rome Statute as they fear a retroactive application of the convention.

The numerous political crises that took place since the adoption of the Comprehensive Peace Agreement have not favored the ratification of the ICC convention.

Nepal has been witnessing continued deadlock, a stagnant peace process and an extension to the drafting period of the new constitution and the Constituent Assembly. The formation of many unstable and coalition governments during the conflict and post conflict period, even after the establishment of democracy, has become the reason for slow response or non-response of the state regarding the accession of the Rome Statute, ensuring widespread impunity in the country and protecting the people from possible flagrant violations of their human rights in the future. There was a sense of optimism among the people after the Minister for Foreign Affairs Upendra Yadav tabled the proposal for accession to the Statute on 11 February 2009 that the government would take steps towards this end. All the political parties, including the UCPN-Maoists, have expressed their commitment to supporting the Rome Statute system. However, there has been no indication of moving towards the implementation of the House of Representatives, which has created the ground of uncertainty to the ratification of the Rome Statute where the government and political parties need to be serious enough for ending impunity in the country.

Misconceptions about the retroactivity effect of the statute and the mistrust among political parties has seriously hampered the accession process. Similarly, the tendency of some leading political parties and the government to withdraw criminal charges on the name of politically motivated crimes, are also obstructing the criminal justice system and are challenging the state obligations towards the nationally and internationally agreed rule of law.

II. JUDICIAL SITUATION

a. Formal justice

One of the best safeguards that a State can provide for protecting the fundamental rights of its citizens is to ensure that they have free and fair access to an efficient and impartial justice system. A country's criminal justice system is based primarily on the ideals envisioned by the constitution of that country. An independent criminal justice system was established in Nepal along with the new constitution in 1990. That constitution upheld the

¹ FOHRID, Brief report of Interaction program on Importance of accession to the Rome Statute of ICC by Nepal, 31 August 2010, Hotel Malla, Kathmandu

² FOHRID, Brief report of Interaction program on Importance of accession to the Rome Statute of ICC by Nepal, 31 August 2010, Hotel Malla, Kathmandu

concept of a fair and an impartial criminal justice system. However, laws enacted after 1990 were not implemented properly or evenly and, despite continuous improvements, it has in many ways failed to take on the attributes of fairness in proceedings and has largely failed to comply with the universally recognized principles of an efficient and effective justice system.

After the April 2006 uprising, Nepal in 2007 enacted a new interim constitution, which was prepared in consultation with all major political parties. It is dedicated to the sovereignty of the people and designates the prime minister as the head of State instead of a king. The concept of equality in justice, with fair and impartial investigations, is again upheld by the interim constitution of Nepal. It aspires for a free and fair criminal justice system, and thus anything contradictory or inconsistent with this aspiration can be deemed unconstitutional³.

Nepal does not have a separate criminal trial court or a criminal bench. According to the current interim constitution, the Supreme Court is the highest court; lower on the judicial hierarchy are the Appellate Courts and the District Courts. The Supreme Court is a writ jurisdictional court whereby a single bench hears writ petitions and other subsequent hearings are heard by a divisional bench or a full bench as befits the gravity of the case. Decisions of the Supreme Court are final unless there is a flaw in the interpretation of the law or non-observance of past precedents whereupon any case disposed is subjected to review. The President appoints the chief justice in the Supreme Court upon recommendation of the constitutional council.

Appellate Courts hear cases as one body or in the form of a divisional bench. The Court of Appeal has the right to exercise and hear writ petitions, the power hear appeal and to try certain cases. District Courts are courts of first instance. There is one for each district and all cases, whether civil or criminal, are subjected to hearing by a single bench. Section 7 of the Judicial Administration Act provides the District Courts with the first instinct of jurisdiction on all kinds of cases within their territory. The jurisdiction includes the power to conduct a trial, take necessary proceedings and or make a judgment.

A dimension of access to justice is the ability of citizens to be familiar with their legal entitlements and to be able to obtain advice from qualified people about the opportunities and duties that laws provide. Much remains to be done in Nepal to increase access to justice. The Interim constitution of 2007 endorses the pre-existing framework of the separation of powers between the judiciary, the executive and the legislature and preserves the validity of existing laws.⁴ Within this framework the courts are placed at a high level and also regard the decisions of superior courts as a source of law.

The courts of Nepal have a significant amount of experience in providing exemplary decisions on writs filled on cases related to serious crimes under international law. For instances, in case of Courts have stood firmly through their judicial activism by giving directions to the government to enact legislation as per their obligations under international laws, to investigate effectively, to make necessary changes in procedures lacking in the investigation procedure and in providing reparation and compensation.

³Pathak, Kamal, Criminal justice in Nepal, Asian Human Rights Commission, Kathmandu, Nepal, <http://www.article2.org/mainfile.php/0701/310/>

⁴USAID, Nepal rule of law assessment final report, September 2009

In case of Killing of Umesh Chandra Thapa, Killing of Maina Sunuwar, Torture and Killing Arjun Lama, Kotwada killings, Killing of Ujjan Shrestha's cases courts have given landmark decisions.

The judiciary is facing the serious challenge of the non-implementation of its verdicts. As the country is passing through a transitional phase, the State organs and bodies, due to various reasons, are unable to effectively monitor the implementation of the courts decisions on serious human rights violations and counter impunity measures. The frequently changing political system and government and political intervention in the courts have hampered the realization of a free and fair justice system.

The judiciary is one of Nepal's most severely neglected State institutions. The budget provided to the judiciary is grossly inadequate to accommodate its physical and logistic needs in conducting timely fair trials. The misleading perception that investment in the justice system would be unproductive is strongly entrenched in the minds of Nepal's politicians. Nepal's judiciary is unable to carry out its responsibilities in an efficient way because of inadequate financial resources and a lack of cooperation by the government and the political parties.

Massive withdrawal of criminal cases filed against those charges with various offices, including serious charges filed before the period of insurgency has been obstructing the justice system and hence encouraging impunity in the country. The attempt of the State has threatened the rule of law and has challenged the state obligations under the national and international laws. Such acts and attempts, which have occurred due to politicization of crimes and pressure to withdraw cases against criminals, ultimately result in a fragile and flawed judicial system.

There are many weaknesses in the administration of justice but there are also several encouraging initiatives to address them. Principal among these is the sustained commitment of the Supreme Court to the implementation of a strategic plan, the deliberate and participatory ongoing process, under the guidance of the Ministry of Law and Justice and the Nepal Law Commission, to reform important legislation, and the vigorous activism of a number of civil society organizations determined to protect and strengthen the rule of law.

b. The Bar⁵

From 1953 lawyers started to practice law in the Nepalese courts. Spanning nearly 4 decades, today the Nepalese Bar has emerged as a strong organization. Until the enactment of the Bar Council Act in 1992, lawyers were under the supervision and control of the Supreme Court. Presently the Bar is administered by the Nepalese Bar Council headed by the Attorney General of Nepal. The Bar Council of Nepal is a policy making body, which is also responsible for conducting the qualifying tests for entry to the Bar. Additionally, the Council works for the professional development of lawyers as well as to look into disciplinary matters relating to the Nepalese lawyers. The Nepal Bar Association is the central organization of the Nepalese Bar. The Supreme Court Bar Association, Appellate Court Bar Associations and District Court Bar Associations are established under the Nepal Bar Association. Nepal Bar Association is also a policy making body of the Nepalese Bar⁶.

⁵ ASF. « Rapport provisoire de mission exploratoire. Népal ». Août 2008. p.28 et sv
⁶ <http://www.supremecourt.gov.np/main.php?d=general&f=bar>, 29 February, 2012

The Nepal Bar Association (NBA) was created in 1956 and became a professional organization in 1963. In 2008, the Bar had 5320 active members⁷ across 84 Bar Units: one for the Supreme Court, one for each of the 16 Appeal Court and 67 for the districts. Most districts benefit from significant representation but it appears that a few high mountain districts do not have, or only have, a few lawyers to serve them. The NBA works under the supervision of a 17 members Committee and the Chairman.

The NBA has five members on the Bar Council. They are appointed after a ballot among its members and are usually represented on other statutory and ad hoc committees and boards concerned with the administration of justice. The NBA is in partnership with donors and government in areas concerned with the development of the legal profession and legal services, such as legal aid. Few positions on its governing board and its various committees and programs are occupied by women or persons from disadvantaged groups. However, due to different internal and external causes, the NBA works for the public justice, is being less efficient.

To promote the legal and human rights issues, the NBA has created over 120 thematic committees including committees on Criminal law, transitional justice and the International Criminal Court. However it has not been able to bring the issues into discussion effectively because of the lack of financial and human resources, and also lack of sufficient awareness materials. There is a crucial need of collaborative approach between the organizations engaged in the process. As legal community has an effective role in implementing the provisions of the Rome Statute, capacity building activities in coordination of NBA for lawyers and judicial sectors should be designed and implement. Similarly, the NBA has various regular publications, technical assistance for the publication of knowledge documents related to Rome statute system could be an effective tool to aware stakeholders.

III. TREATY ACT OF NEPAL, 1990: STEPS REQUIRED FOR RATIFICATION

The Treaty Act of Nepal, 1990 gives the power to the Prime Minister and the Council of Minister to ratify or access of bilateral and multilateral treaties, agreements, conventions or protocols. Although the Constituent Assembly has expressed a positive desire to approve possible ratification, without the initial promptings of the Prime Minister and the Council of Ministers there is little the MPs can do in the interim⁸. Knowing that at the moment, all the attention is brought on the possible adoption of a new constitution, not many efforts are made to adopt the ICC treaty.

The following steps are required in order to ratify an international treaty:

- Treaties required to be ratified, accessed, approved or accepted, except prescribed by Article 156 of the Interim Constitution of the Nepal 2007. Nepal government should present a proposal before the Constituent Assembly for ratification, accession, approval or acceptance,
- The majority of the MPs, present, should approve the proposal therein,
- After approval from the Constituent Assembly, government should deposit the instrument of ratification to the concerned authority⁹.

⁷ <http://www.nepalbar.org/member.html> , 29 February, 2012

⁸ Asian Forum for Human Rights and Development, ICC Week: Call for the ratification of the Rome Statute in Nepal, 10 July 2007

⁹ INSEC. "Ratification process. Treaty ratification process in Nepal".
<http://www.icc.inseconline.org/ratification.php>, Consulted 12 August 2011

IV. NECESSARY LEGISLATIVE REFORM

Nepalese Criminal Law has not properly defined the crimes stated in the Rome Statute. There are some scattered criminal laws similar to the provisions contained in the Rome Statute, others are at odds with the Rome Statute and some are lacking. Being a party to the Treaty of Rome imposes several expressed and implied obligations upon States parties. There are basic elements that have to be incorporated into national laws to enable States to exercise their obligations and to ensure that the national laws are consistent with international law, particularly with the provisions of the Rome Statute. For example: defining crimes, principles of criminal responsibility and defenses. The legislation should provide that the crimes in the Rome Statute and other crimes under international law are also crimes under national law.

1. The Nepalese Interim constitution 2063, in Article 151, has stated that the President may, on the recommendation of the Council of Ministers, grant pardon and suspend, commute or remit any sentence passed by any court, special court, and military court or by any other judicial, quasi-judicial or administrative authority or body. This is contrary to the Rome Statute and could be repealed in the forthcoming constitution of Nepal which is currently being written.
2. Similarly, the Interim Constitution 2063 Article (24) has provisions which do not provide fair trials to the citizen of Enemy Countries, which is counter to the nature of the Rome Statute and other human rights instruments.
3. The Nepalese Treaties Act 1990 doesn't mention clearly the relevance of International Treaties in Nepal and the Court is also not clear on it. The forthcoming constitution should address the significance of International Treaties signed by the government of Nepal.
4. As the Rome Statute clearly mentions in Article 12(3), the retrospective clause in the Statute can be activated for crimes committed after 2002, when the Rome Statute became legally binding. The Court could act on revised laws to address those crimes and punish the perpetrators independently, without the need of such cases to be referred to the ICC. As stated in the Rome Statute, Nepal could address such provisions in the new constitution and grant domestic courts jurisdiction over such crimes and thus a method by which such crime may be addressed in a national court of law.
5. The Rome Statute has internalized that the cases which are pending in front of the Court for a decision could not be withdrawn before the decision is taken. However, contrary to our State Cases Act 2049, the government can withdraw even serious crimes cases at their discretion which seems to provide the State with ample opportunity to create further impunity. Nepal must change such laws so that no State authority misuses the law against humanity or the principles of justice.
6. The Extradition Act 2045 allows the government to not extradite Nepalese citizens to any country. However, the Rome Statute clearly states that the State party must support the ICC if it requests the presentation or extradition of people accused of crimes that are included in the Rome Statute.
7. The cases related to the jurisdiction of the Criminal Court have no mention of a time limit within which a guilty party may be charged. However in MulikiAin 2020, case Relating to Killing, 20 (No.) has provision of time limit even for serious cases. So, Nepal has to improve such contradiction of Law related to the Rome Statute after the ratification, as Nepal is in the process of making a New Criminal Code, so it is better to include such provisions on proposed criminal code.

8. The Military Act, 2063, Police Act, 2012 and Armed Police Force Act, 2057 have stated that any incidents or acts which were committed by the orders or commands of the seniors officers or authorities don't qualify as criminal liabilities, however the Rome statute strongly opposes such a provision.
9. In the Nepalese criminal justice system, for serious crimes like murder, there is a penal provision of life imprisonment with entire property, whereas the Rome Statue does not include such kind of legal provision for punishment (i.e. capturing the entire property of guilty). On this ground, our criminal justice system should change its penal provision of capturing the entire property of accused even though he/she is found guilty.
10. Nepali criminal justice system does not have any legal provision to provide the compensation, even if any innocent victim is suffered because of the "Miscarriage of Justice". In addition, there is no sufficient law that can provide the compensation to the crime victim or can provide the place for rehabilitation to the victim. That's why, necessary law should be made to address these issues.
11. Nepali criminal justice system does not have any legal provision and procedure to penalize the crimes like Forced Pregnancy, Enforced Sterilization as stated in Rome Statute. Muluki Ain (General Code), Rape Chapter has also not addressed these cases as a crime, so it is better to include these crimes as Crimes Against Humanity with appropriate punishment provision in our legal system.
12. Forced pregnancy and enforced sterilization are some of the stated crimes in the Rome Statute whereas in MulukiAin, a case relating to rape, such cases are not included. So, it is better to include such cases in our national law in addressing crimes against humanity.
13. At the time of the armed conflict in Nepal, a number of people were forcibly disappeared by both the State and the opposition, but Nepal has no proper laws to address such problems. The State has not ratified the "International Conventions for the Protection of All Persons from the Enforced Disappearance" of 2006, so there is an urgent need for Nepal to ratify this convention, and then Nepal can come out to solve some legal problems existing now. Therefore, the upcoming constitution should address such crimes and make provisions for the punishment of those crimes.
14. Nepal must create national laws which include all three crimes stated by Rome Statute.

Before and after the ratification of the Rome Statute, it would be ideal if the government of Nepal created a specialized working team and provided them with the authority to submit draft legislation which would support the national law.

Similarly, in procedural part, the national law should be guided by two objectives: after becoming party to the Rome Statute, Nepal would have to make a necessary procedure in national laws that would be effective in prosecuting the accused, as defined by the Rome Statute. The second is that if the national court is unwilling to prosecute the accused, or if the national court prosecuted the accused only for demonstration, then according to the Rome Statute the jurisdiction of ICC would come into play. So to avoid these situations, the National Criminal Court should be established with separate procedural mechanism. Nepal, being party to the "Vienna Conventions on the Laws of Treaties" 1969, is obliged to fulfill all the responsibilities created by its ratification of such international treaties with good motive and no excuse. In these circumstances, if Nepal becomes party to the Rome Statute, all the crimes contained within the Rome statute must be addressed by Nepal through the enactment of procedural legislation.

Nepal has ratified a number of International Treaties, Conventions and Covenants related to Human Rights, Humanitarian law, War crimes and Genocide, so it is clear that Nepal has to draft and implement necessary laws in order to fulfill those responsibilities.

V. INITIATIVES UNDERTAKEN

- On July 25, 2006, the Parliament issued a directive, also called the accession bill¹⁰ or 2063 Shrawan 9¹¹, to the government urging them to ratify the Rome Statute¹². The MP Parshu Ram Meghi Gurung drafted a resolution in this regard.
- On October 18, 2006, an inter-ministerial task force was established in order to study the consequences for Nepal of a ratification of the Rome Statute. Report was published in December 2006 following which government declared it would launch the ratification process¹³. On December 14, 2006 the Task force submitted its report to the government and the Deputy Prime Minister and Minister of Foreign Affairs assured CSOs that the government would soon begin the process required to become a party to the Statute.
- In March 2007 speaker of Interim Legislature-parliament expressed commitments to push forward the agenda of accession to the Statute; Chief whips of political parties also positively responded to the agenda.
- On August 6, 2007 National Human Rights Commission asked Government to Ratify Rome Statute¹⁴
- On 11 February 2009, the issue of ratification was submitted to the cabinet by the then Minister of Foreign Affairs Upendra Yadav but the then Minister of the Interior declared that the Cabinet would not take other steps towards ratification before it had consulted informally all political parties¹⁵.
- On 9 March, 2009, the Cabinet set aside draft bill that was submitted on 11 February 2009
- In 2009, the Constituent Assembly succeeded enacting a resolution calling for the ratification of the Rome Statute¹⁶. According to the Minister for Law and Parliamentary Affairs Dev Gurung, the bill needs broader discussions but the Cabinet is likely to move on with the bill considering the political nature of the legal document. Yet, it seemed to him that the Prime Minister and the Law minister are not cooperative¹⁷.
- On December 3 2009, President of then CPN Maoist, Pushpa Kamal Dahal assured President of the ICC, Judge Song that he will initiate dialogue with other parties for accession, after getting full assurance that ICC is not retroactive¹⁸.

¹⁰ Istock Analyst. "Nepal asked to accede to Rome Statute of Int'l Criminal Court". Istockanalyst. 25 February 2010. <http://www.istockanalyst.com/article/viewiStockNews/articleid/3899141>
Consulted on 12 August 2011

¹¹ FOHRID, Brief report of Interaction program on a Campaign against Impunity: Ratification of Rome Statute, 7 July 2007, Kathmandu

¹² Amnesty International. « AI Nepal Activities. Ratify Rome Statute ». Amnesty International. <http://amnestynepal.org/campaigns/ai-nepal-activities/-ratify-rome-statute-.html>, consulted on 12 August 2011

¹³ Conseil de Sécurité des Nations Unies. « Rapport du Secrétaire Générale sur les enfants et le conflit armé au Népal », S/2008/259

¹⁴ NHRC Statement dated 6 August 2007

¹⁵ Amnesty International. "AI Nepal Activities. Thousands of people called Nepal government to ratify Rome Statute immediately". *Amnesty International*. <http://amnestynepal.org/campaigns/ai-nepal-activities/thousands-of-people-called-nepal-government-to-ratify-rome-statute-immediately.html>, consulted on 10 August 2011

¹⁶ Amnesty International. "Nepal's Minister of Foreign Affairs commits to supporting international justice". *Amnesty International*. 28 July 2009. <http://www.unhcr.org/refworld/docid/4a82805e1e.htm>, Consulted 12 August 2011

¹⁷ Ghanashyam. Ojha. "Maoist, Nepal Army agree on Rome Statute: not in Nepal". *República*. 9 March 2009. http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=2524, Consulted on 12 August 2011

¹⁸ Nepal Samacharpatra dated 4 December 2009

- On February 3, 2010 Deputy Prime Minister and FM Sujata Koirala expressed commitment to take the proposal of ratification to the High Level Political Mechanism during the program organized by NCICC on "Significance of accession to the Rome Statute by Nepal before ICC Review Conference"¹⁹.
- In April 2010, Office of the Prime Minister held a discussion with line ministries and security agencies on accession to the Rome Statute.
- On July 2010, NIs including NHRC, NWC and NDC suggested government to accede to the Rome Statute through the report submitted to the UN Human Rights Council for the purpose of review of human rights situation of Nepal under the Universal Periodic Review (UPR) in January 2011.²⁰
- In June 2011, Government in its action plan for the implementation of the UPR Recommendations, listed accession to the Rome Statute as one of the major agenda and during the adoption of the UPR outcome on June 7th government assured international community to ratify Rome Statute²¹.
- On July 21, 2011, Chairperson of National Human Rights Commission while launching a book related to the ICC, urged government to ratify the Rome Statute Immediately²².
- August 1st, 2011, the Coalition for the International Criminal Court sent a letter to President Ram Baran Yadav urging him to ratify the Rome Statute²³.
- September 15th, 2011, a Nepalese delegation visited the ICC and met with Judge Sang-Hyun Son and representative of the Prosecutor office and the Greffe. The delegation was composed of several members of the Nepalese parliaments as well as members of the NGO Parliamentarians for Global Action.

VI. OPPORTUNITIES FOR THE RATIFICATION

The establishment of the ICC is considered a milestone in the long history of humanity's search for international justice and peace. The international human rights law stands against general amnesty to serious international crimes, the State will be bound to use reason and sense of justice when proclaiming general amnesty. Therefore, a resolution to join the international community by being a party to the Treaty would also expedite the legislative and judicial reform initiatives in the country also. It is submitted that Nepal stands to gain more by joining the international community in its resolve to stamp out serious crimes of international concern than by remaining isolated and aloof. It obligates Nepal to standardize its law and requires justice system to adopt global format- in terms of jurisdiction, and due process and on crimes and punishment.

The process of drafting the implementing legislation requires the participation not only of the ministries tasked to work on the draft for adoption by the parliament but the broadest section of the people: the lawyers, the women, the children, the indigenous peoples, especially the victims and their families. This process will guarantee that all obligations are included in the legislation and in the actual implementation, will ensure support for the State's commitment to international justice.

¹⁹ HLPM should take initiation for ICC ratification: DPM Sujata Koirala, <http://nnv.nepalnews.com/videoplay1.php?id=3484>

²⁰ The Report of the NHRI of Nepal on the UPR Processes, July 5, 2010 http://www.nhr-cnepal.org/publication/doc/reports/UPR_Report-2010.pdf

²¹ Report of working on the Universal Periodic Review on Nepal, A/HRC/17/5/Add.1, 1 June 2011

²² Renewed demand to ratify Rome Statute <http://www.ekantipur.com/the-kathmandu-post/2011/07/21/nation/renewed-demand-to-ratify-rome-statute/224264.html>

²³ CICC. « La Coalition mondiale appelle le Népal à rejoindre la Cour pénale internationale ». CICC. www.coalitionfortheicc.org, consulted on 12 August 2011

Also as a State party, Nepal has the right to nominate a judge and other officials and personnel of the Court and given its long experience in the area of human rights and struggle for justice, it is on high moral ground to be heard and to be recognized in the international community.

It will also sit as a State party in the Assembly of States Parties that make decisions with regards the Court. As the newest mechanism for international justice, Nepal would be in the best position, given its experience, to participate in shaping the Court towards the role it was designed and intended to play in humanity's search for justice. It would be a significant contribution towards the promotion of global justice. By the ratification of the treaty, Nepal also gets an opportunity to participate in the working of the Court.

Nepal's participation to the Rome Statute would inspire other fellow Asian nations. Nepal's ratification of ICC is critically important to its peace building effort, without effectively addressing the issue of impunity it would be hard to move Nepal's peace process ahead. Nepal's accession to the Rome Statute would also enhance its international prestige and inspire its South Asian fellow neighbor, only Afghanistan and Bangladesh from South Asia has ratified the Statute.

VII. OBSTACLES TO THE RATIFICATION

- Fear of a retroactive application of the Rome Statute. Many worry that actions will be undertaken against them if Nepal ratifies.
- Fear of the backward syndrome.
- Even though Nepal did not ratify the Rome Statute, they already signed a bilateral treaty with the USA Authorities to prevent extradition of a national of one of these two countries to a third one party to the ICC statute²⁴. This created some concern among the politicians regarding the possibility for an effective implementation of the Rome statute. Some believe that this has blocked the accession process.
- Impunity of crimes committed between 1996-2006 and after the signing of the Comprehensive Peace Accord (CPA)
- Lack of political consensus.
- Concerns of some political parties: for example, UCPN-Maoist agrees that the ICC treaty should be acceded by Nepal but, they are very anxious about the possibility of its misuse in the future. They are not sure that ratification shall resolve all problems. They suspect that accession might decrease the country's image rather than increasing it. They believe that seeking justice in the international court is acknowledging weak justice system of our country before others²⁵.
- Lack of comprehensive understanding of the ICC system.
- On September 4, 2011, Prime Minister Bhattarai formed a new government of coalition including members of both the Unified Communist Party of Nepal-Maoist and the United Democratic Madhesi Front²⁶. Two days earlier, Human Rights Watch posted on its website a press release expressing its concern about an agreement taken between the aforementioned parties calling for the withdrawal of criminal cases committed during the country's armed conflict²⁷.

²⁴ FOHRID, Brief report of Interaction program on Importance of accession to the Rome Statute of ICC by Nepal, 31 August 2010, Hotel Malla, Kathmandu

²⁵ FORHID, Brief report of interaction program on Need of accession to the Rome Statute of ICC by Nepal, 7 October 2010

²⁶ <http://www.rtl.be/info/monde/international/820615/nepal-le-premier-ministre-maoiste-forme-un-gouvernement-de-coalition>

²⁷ <http://www.hrw.org/news/2011/09/02/nepal-cancel-pact-wartime-amnesty>

PART II: SURVEY OF THE KNOWLEDGE OF TARGETED GROUPS AND BENEFICIARIES OF THE ROME STATUTE SYSTEM AND THE ICC

I. RESULTS OF THE QUESTIONNAIRES

To understand the view of respondents (especially legal professionals of different sectors) about the ICC and Rome Statute, the questionnaire was designed relating it with the ICC and the Rome Statute. The respondents were individually interviewed to their respective places or offices in different times according to their availability. Each question of the questionnaire was asked to the respondent respectively, during the interview the respondent had raised some queries about the question and also shown their interest to provide the information and the story about their current and past involvement to the issues of International Criminal Court and Rome Statute. Each questionnaire was filled up in front of the respondent, so that there would not be any mistake on the information provided by them.

Presented below is a compilation of data received from participants in a baseline survey conducted by INSEC, Nepal. The survey was intended to discover the extend of the knowledge held by various actors in Nepali society on the Rome Statute and the International Criminal Court. The respondents were also provided with the opportunity to voice their expectations, or needs in relation to the situation of prosecuting international crimes in Nepal as well as being asked various other questions.

Of the seventeen respondents, ten were engaged in a legal profession or legal work while three worked for an NGO while three were governmental employees and one was a student. Eleven of the participants stated that they worked across Nepal, while three stated that they work in Kathmandu specifically. Two did not state where they work and one of the participants is based in the abroad.

I – Knowledge of the International Criminal Court

1. Knowledge of the Rome Statute and the International Criminal Court

Weak	Average	Good	Excellent
4	7	4	2

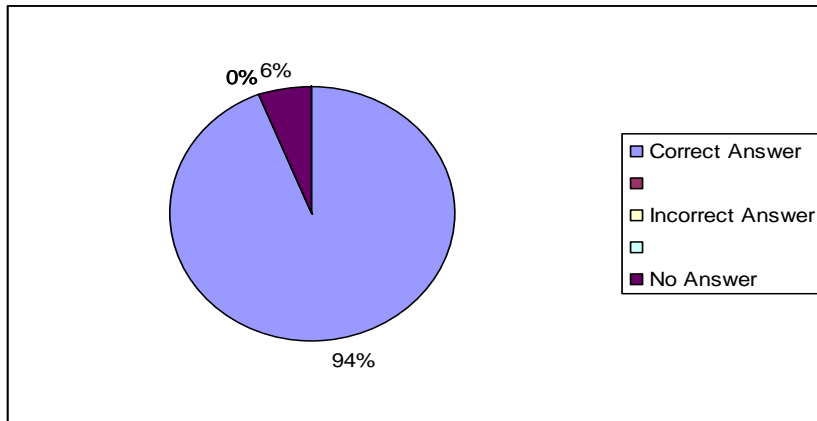
The overall knowledge of the respondents regarding the Rome Statute and the related role of International Criminal Court was high, with the majority demonstrating an awareness of the legal basis of the Statute and the crimes which may be tried in the International Criminal Court.

2. How the respondent gained this knowledge

Study	Independent Research	Media
11	4	2

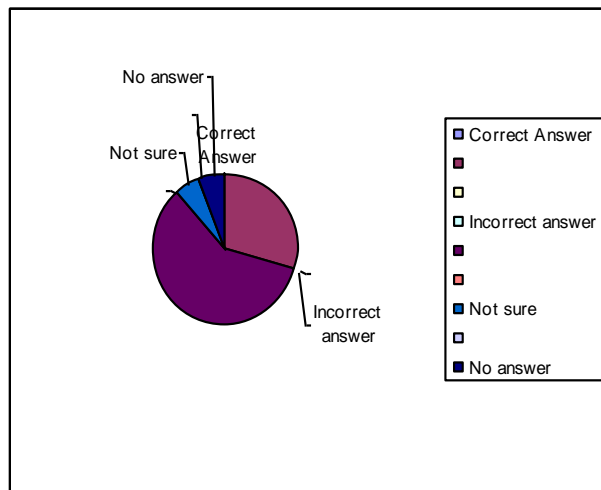
II- Knowledge of the Rome Statute System

Understanding of the principle of complementarity and whether or not Nepal has ratified the Rome Statute



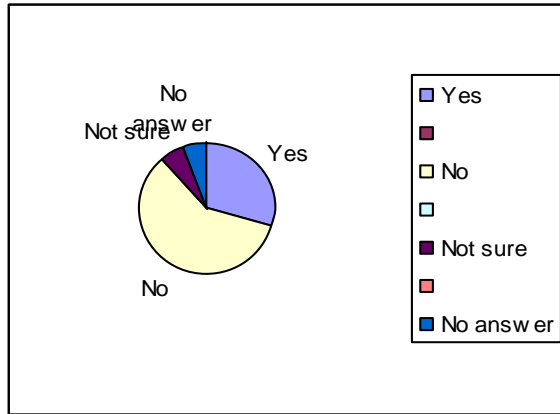
The concept of complementarity appeared to be clearly understood by the majority of respondents. Whether or not Nepal has ratified the Rome Statute, thereby granting the International Criminal Court the ability to try cases under its jurisdiction was understood by each respondent.

5. Has Nepal adopted any legislation related to the crimes over which the International Criminal Court also exercises jurisdiction?



Many of the respondents seemed to think that there is legislation in place in Nepal which could try people for acts which the International Criminal Court also has jurisdiction over. This may seem to be a shortcoming in the general knowledge of those sampled in this survey regarding the nature of domestic criminal law in Nepal.

6. Are there cases of international crimes which occurred in Nepal which could be tried before domestic courts?



The results displayed here reflect that the majority of respondents are unaware about the international crimes and the possibility of prosecution at the national level under existing legislation which shows the lack of adequate knowledge on the nature and component of international crimes and its link with the jurisdiction of national courts.

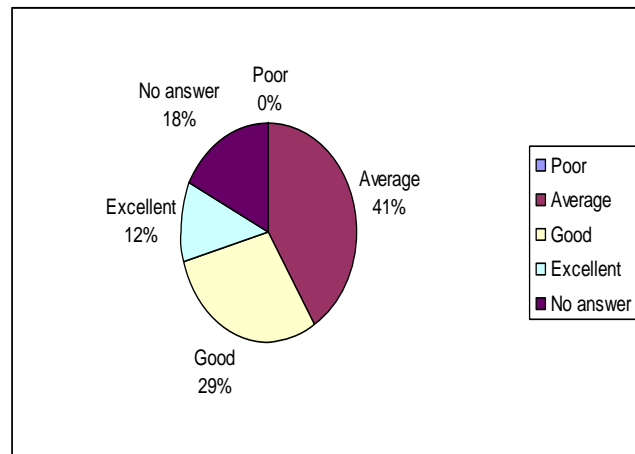
7. Would the ratification of the International Criminal Court by Nepal result in retroactive application of the Statute for crimes committed after July 2002?

Yes	No	Misunderstood/No answer
5	11	1

The result compiled from this question is highly significant; it demonstrates that the majority of the respondents have clear idea on the application of the Rome Statute.

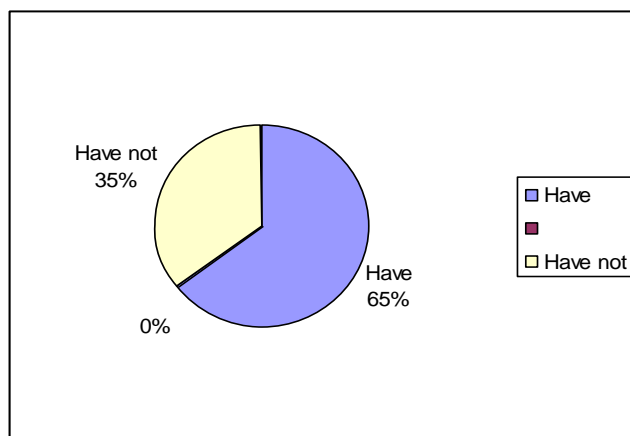
III – Identification of Needs

8 - Level of knowledge and understanding of the International Criminal Law.



The knowledge of international criminal law demonstrated by the respondents themselves proved to be of an average to above average standard. Areas for improvements provided included a greater familiarity with criminal law and international humanitarian law.

9 – The number of respondents who have participated in activities aimed at the promotion of the ratification of the Rome Statute



The data received reflects a level of participation in activities aimed at promoting the ratification of the Rome Statute, which is a positive reflection on the work of NGO’s and other institutions in Nepal who have disseminated knowledge of the Statute and who have been advocating for the ratification of this instrument.

Those credited with organizing such activities include (in order of the number of times mentioned by respondents) INSEC, NJA, ICJ, Amnesty International, NBA and FOHRID

10 – Where respondents felt that future training on the Rome Statute or ICC should take place in Nepal

Far West	Mid West	West	Central	East	Nationwide	Where abuses were worst
1	0	1	4	0	3	2

It is clear that a number of respondents feel that future training on the Rome Statute and the ICC should take place. Some respondents felt that it should take place where abuses were worst is not an indispensable viewpoint.

IV – Expectations

11 – Expectations and needs in the area of justice linked to international crimes

Several other expectations or needs were articulated by the participants. However, because the respondents did not provide specific locations regarding their places or work, with eleven stating that the work in Nepal generally, and three stating that they work in the Kathmandu Valley, it is not viable to assess their needs with respect to their locations. Instead, a simple table demonstrating their needs or expectations according to their occupations will be provided.

Enactment of domestic legislation complementary to the Rome Statute	Ratification of the Rome Statute	Prosecution of criminals
3	2	9

It is clear from this data that there is a strong sense for the judiciary to ensure the transcription of laws into the constitution which will enable them to deal effectively with those guilty of grave crimes in Nepal. What is even more evident is the necessity for criminals to be brought to justice by a competent and effective legal system.

Several other expectations or needs were articulated by the participants. However, because the respondents did not provide specific locations regarding their places or work, with eleven stating that the work in Nepal generally, and three stating that they work in the Kathmandu Valley, it is not viable to assess their needs with respect to their locations. Instead, a simple table demonstrating their needs or expectations according to their occupations will be provided.

Legal Professionals	Governmental Workers	Students	NGO Workers
<ul style="list-style-type: none"> - For the truth of the conflict to be established and acknowledged - The prosecution of those who are guilty of war crimes - Enactment of domestic legislation complementary to that of the Rome Statute - Victims should be made more aware of their human rights and should receive reparations. - Ensuring effective investigations, arrests and prosecutions - Nepali law should be sufficient to address these crimes - Control and combat impunity 	<ul style="list-style-type: none"> - The capacity to try individuals in domestic courts - Ratification of the Rome Statute - Need for the Rome Statute to be discussed more widely amongst the citizenry of Nepal - International law not to be used to prosecute people for their faith or ideology 	<ul style="list-style-type: none"> - Timely due process for the prosecution of International Crimes - Administration of Justice to victims 	<ul style="list-style-type: none"> - The need to ratify the Rome Statute - Legislative Development

12 and 13 – A comparison of trust between the ICC and the government of Nepal to fulfill the above expectations and reasons cited

Trust in ICC	Trust in government
<ul style="list-style-type: none"> - The Rome Statute is a “special law” which would compel the government to fulfill its obligations - Previous success of the ICC is a cause for trust - The ICC can draw international attention to a state, thus “naming and shaming” technique may be exercised - The ICC can compensate for the ineffectiveness of national courts 	<ul style="list-style-type: none"> - Lack of political will - The state appears generally unwilling to ratify the Rome Statute - The need for the government to amend domestic legislation is too great a burden for the government at present

<ul style="list-style-type: none"> - The ICC operates effectively and impartially - The ICC is guided by the principles of law, order and justice - The ability of the ICC to issue international arrest warrants is seen as a positive attribute of its nature 	
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14 – Challenges and opportunities in relation to the prosecution of human rights abuses by the Nepalese justice system

Opportunities	Challenges
<ul style="list-style-type: none"> - Ratification of the Rome Statute - Activism/Advocacy of human rights organizations and civil society - Amend current laws - The drafting of a revised constitution may ameliorate the ineffectiveness of current laws 	<ul style="list-style-type: none"> - Impunity - Political Interference - Lack of adequate standards - Poor legal system and lack of implementation of human rights standards - Lack of political will - Weak criminal justice system - Lack of independence of the judiciary - Political/criminal nexus

II. ANALYSIS OF THE RESULTS

After analyzing the results of the questionnaires, the only conclusion possible is that Nepalese lawyers lack sufficient and adequate understanding of the ICC system and the Rome Statute. Most of them acknowledge this by choosing the answers “very limited” or “average” when they were asked about their understanding of the ICC. 17 of them believe that trainings and workshops are necessary. Of the seventeen respondents, ten were engaged in a legal profession or legal work while three worked for an NGO while three were a governmental employee and one was a student. Eleven of the participants stated that they worked across Nepal, while three stated that they work in Kathmandu specifically. Two did not state where they work and one of the participants is based abroad.

84% of the respondents have understanding on the principle of complementarity and also on the Nepal’s status of the accession. 65% of the respondents have a very clear knowledge on the jurisdiction of the International Criminal Court over crimes committed in Nepal prior to such ratification.

Regarding their experiences and knowledge, few of them have gained experience over serious violations of human rights; clear idea on whether the international crimes can be tried at national courts and adoption of legislation related to the crimes over which the International Criminal Court also exercises jurisdiction (Genocide, Crimes Against Humanity, War Crimes).

Most participants believe that the ICC is capable to meet their expectations regarding investigation and prosecution. They believe that the Court is more reliable than the domestic judicial system, because it is impartial, non-political, works with qualified people, would conduct strict investigation with efficient mechanisms and punish the authors. Only one participant was concerned about the duration of the process before the ICC.

Some expressed their desire to have a local office of the ICC in each country concerned by violation of the Rome Statute.

Majority of the respondents expressed their distrust in the Nepalese judicial however some of the participants underlined the desire of the State authorities to include the obligation under the Rome Statute into the domestic legislation could strength the national judicial system. The others are concerned about the lack of knowledge and experience of the stakeholders, the weakness of the Nepalese system and the lack of separation of powers between the judicial and the executive. Participants of the survey expressed their view about the lack of independence of judiciary; political interference, corruption and impunity have somehow obstructed the Nepali criminal justice system. Most of the respondent suggested the need for immediate ratification of the Statute to strength the national judicial and legal system. The result of the survey also shows the need of nationwide training on the ICC as the majority of the responded feel the future training on the Rome Statute and the ICC should take place. Participants of the survey also suggested need of more training on the Rome Statute system and the International Criminal law and such training could be participated in by professors of law so that such knowledge will be carried on to their students, therefore creating a greater sense of familiarity with the Statute and the International Criminal Court.

While responding medium they gained knowledge on the ICC, number of respondents declared that they heard about the ICC either through media (2), books, Internet, Rome Statute, college education, programs and interaction (11), and independent research (4). Therefore, the result of survey shows the need of development of more learning and training materials with the similar objective of increasing knowledge and awareness of the Statute and the Court and also to campaign to push forward for the accession of Rome Statute.

The number of respondents participated in the promotional activities appreciate the work of NGOs on dissemination of knowledge of the statute and suggested the need of involvement of major stakeholders such as lawyers, law enforcement agencies and judicial officials in the process.

Majority of the respondents see the opportunities of ratification as some initiations have taken by the government and the current moment as the country is drafting constitution through constituent assembly. However, they also have some fear of deepening situation of impunity; political interference and weak criminal justice system and state institutions.

Map of relevant national and international actors

1. INSEC/NCICC INSEC has been coordinating National Coalition for the ICC since 2001 for the purpose of the formation of the coalition is to act on different platforms; such as to campaign in support of ICC, to advocate /lobby in favour of the court in Nepal, to sensitize and aware the concerned authorities of Nepal to accede the Rome Statute of the ICC, to bring the attention of the members of the society on the need of the court and to bring NGOs, academicians, lawyers, Bar Association and other individuals in the coalition network. Till the date it has conducted over 1200 (see annex 4) different events to put pressure for the accession of the Rome Statute. Educational and promotional campaigns; capacity building activities and advocacy and lobby are major strategic approaches adopted by the coalition.

2. National judicial academy The National Judicial Academy (NJA), a member of International Organization of Judicial Training, was established in 2004 to serve training and research needs of the judges, government attorneys, government legal officers, judicial officers, private law practitioners, and others who are directly involved in the administration of justice in Nepal. It aims to promote an equitable, just and efficient justice system for Nepal through training, professional development, research and publication programs which address the respective needs of judges, judicial officers, government attorneys, government legal officers, judicial officers, private law practitioners and others who are directly involved in the administration of justice. NJA has conducted a research jointly with INSEC on "revision of existing criminal on the basis of the Rome Statute" and Research study on "National Preparation on Implementation of Rome Statute". It has been also conducting training to government attorneys and defense lawyers jointly with NCICC.
3. Bar Associations: Nepal Bar Association is the central organization of the Nepalese Bar. Supreme Court Bar Association, Appellate Court Bar Associations and District Court Bar Associations are established under the Nepal Bar Association. Nepal Bar Association is also a policy making body of the Nepalese Bar. Bar Associations in Nepal are active in providing legal aid to the affected peoples. It has been regularly publishing Bar Journal "Naayadot" covering various issues pertaining to human rights, rule of law, impunity etc. To support for the reform of legislations, awareness raising and advocacy for the effective development of legal instruments, NBA has created over 120 thematic committees including one committee on enacting legislation as per the International criminal court standard.
4. The National Human Rights Commission (NHRC): NHRC- Nepal is an independent and autonomous constitutional body. It was established in the year 2000 as a statutory body under the Human Rights Commission Act 1997 (2053 BS). The Interim Constitution of Nepal 2007 (2063 BS) made the NHRC a constitutional body. It has a separate sphere of responsibilities in the constitutional legal system of the country. These responsibilities complement the responsibilities of the normal machinery of the administration of Justice, the Supreme Court, the Office of the Attorney General, the Commission for the Investigation of Abuse of Authority, and other existing executive, quasi-judicial or judicial bodies performing in the legal system of Nepal. The Interim constitution provides NHRC-Nepal to review prevailing laws relating to human rights in a periodic basis and to recommend the Government for necessary reforms and amendment thereto; to recommend with reasons to the Government to become a party to any international treaties and instruments on human rights, if it is required to do so, and to monitor the implementation of the international treaties and instruments of human rights to which Nepal is a Party and if found not being implemented, forward recommendations to the Government for effective implementation of such instruments. As per the mandate NHRC-Nepal has been conducting various activities for the implementation of international obligations as well as recommending government to become a party to the treaties such as Rome Statute.

CONCLUSIONS AND RECOMMENDATIONS

Unanimous endorsement of a proposal to accede to the Rome Statute on 25 July 2006 by the legislature parliament, proposal for accession to the Statute at the cabinet on 11 February 2009, formation of the task force and revision of the relevant legislation by the government and most importantly commitment of the government for the accession to the Rome Statute in various national and international forum indicates that the government is in some extent doing some necessary preparation for the accession. Being a part of international community Nepal should not stay away from this process of international justice and rule of law and participate in the universal ratification endeavor of International Criminal Court. However, the slower pace towards preparation for the accession has raised some questions as the government is concerned mostly by its stability, the adoption of a new constitution and the integration of the militias among the national army. On top of this, among the stakeholders, especially political parties, there is a deep misunderstanding regarding the retroactivity effect of the ratification. Many believe that if the convention is ratified and the domestic law adapted in consequence, serious crimes committed during the 10 years civil war will fall under the jurisdiction of the Court. So at this point, what is necessary is to give clear message on the non-retroactivity of the ICC Statute which can be done through the massive awareness and for this human resources from various sectors such as lawyers, judiciary, universities and even from the parliament with adequate knowledge on Rome Statute System is necessary. These human resources could mobilize as an effective tool to transmit knowledge on the Rome Statute system and also to push for the accession through lobby, advocacy work. Need to send clear message on the Rome Statute System through discussion and intensive trainings to all stakeholders in all parts of the country;

- Mobile existing NGOs/ NGOs networks working on the area of the ICC to disseminate knowledge to stakeholders specially lawyers so that human resources in this sector can be prepared;
- Need to plan and implement more training / awareness raising programs participated by professors of law so that such knowledge will be carried on to their students, therefore creating a greater sense of familiarity with the Statute and the International Criminal Court;
- Need to develop education and training materials with the objective of increasing knowledge and awareness of the Statute and the Court;
- Need to conduct research and study on the existing legislations to facilitate government to amend domestic legislation as per the principles of international laws particularly international criminal laws;
- Mobilize media to campaign for the accession of the statute and also to give clear message on jurisdiction and effect of the court such as the non-retroactive effect of the ratification;
- Nepal Bar Association particularly the thematic committee on the ICC in NBA should be involved and empowered in the process so that it would be easier to mobilize lawyers and also to gradually spread knowledge on the ICC system to them;

- Active and continued participation of human rights defenders, civil society organizations and National institutions to push forward the agenda of ratification

ANNEXES

ANNEX 1. QUESTIONNAIRES SENT TO LAWYERS



« Promoting the Rome Statute System and enhancing the effectiveness of the ICC »

Baseline Study

Name of respondent: _____

Contact information: _____

Name of the institution / organisation: _____

Type of institution / organisation: _____

Function within the institution / organisation: _____

Geographical area of intervention: _____

Date and place: _____

I. Knowledge of the International Criminal Court

1. What do you know about the Rome Statute and the International Criminal Court?
a) Creation?

b) Who can be tried before the ICC (jurisdiction)?

c) Who can exercise the jurisdiction of the ICC?

d) Who decides to judge a person?

2. How do you know the ICC?

3. Can you explain the difference between a war crime, a crime against humanity and a crime of genocide?

4. Do you know the persons who are currently being tried before the ICC and the reasons why they are being prosecuted?

5. Are there persons who cannot be judged before the ICC (exemption from criminal responsibility)? If so, who are they and why?

II. Knowledge of the Rome Statute System:

6. What does the principle of complementarity described by the Rome Statute mean?

7. Can the ICC and domestic tribunals have concurrent jurisdictions over a case? Justify your response.

8. Has Nepal ratified the Rome Statute?

- a) Yes or no? _____
- b) What are the necessary measures to be taken in order to overcome those obstacles to ratification?

9. Has Nepal adopted any legislation related to the crimes of war, crimes against humanity and genocide?

- a) Yes or no? _____
- b) If yes, who has jurisdiction?

10. Are there cases of international crimes in Nepal that could be tried before domestic jurisdictions?

- a) Yes or no? _____
- b) If yes, name which ones and justify your response.

III. Identification of needs:

11. Have you or your law firm had an experience dealing with criminal or civil cases involving serious violations of human rights?

- a) Yes or no? _____
- b) If yes, how many years of experience do you have in this area? Could you please provide examples of the type of cases you have worked on?

12. Have you or your law firm been or are currently involved in some way in the investigation or proceedings involving serious violation of human rights in Nepal?

a) Yes / No _____

b) If yes:

- Describe the role played by your office or structure
- What are the achievements of your office/structure as of today?
- What has your specific role been?
- What challenges have you faced?
- What are your needs in order to respond to the current challenges?

13. a) What is your level of knowledge and comprehension of international criminal law?

- Bad Average Good Excellent

b) If your answer to the above is *bad* or *average*, what are your shortcomings? What would you like to learn about?

14. Have you ever participated in activities aimed at the promotion of the ratification of the Rome Statute?

a) Yes /no? _____

b) If so, specify: What type of activities? In what capacity (trainer / participant / moderator)? Who organised the activity? The main objective of the training? The topics dealt with? What were the socio-professional categories of the beneficiaries? Strengths and weaknesses of the training activity?

15. Which are the areas of the country where training activities should take place?

IV. Expectations

16. What are your expectations and needs in the area of justice linked to international crimes?

17. Do you trust the ICC will fulfill these expectations? Why?

18. Do you trust the justice system of Nepal will fulfill these expectations? Why?

19. What are the challenges and opportunities in relation to the prosecution of human rights abuses by the Nepalese justice system?

20. Do you know any NGOs (international and national) and other institutions that are active in this area in Nepal?

- a) Yes / No _____
- b) If so, which are the main organisations and what activities are they involved in?

ANNEX 2. QUESTIONNAIRE FOR MPS AND OTHER STAKEHOLDERS



“ Promoting the Rome Statute System and enhancing the effectiveness of the ICC »

Baseline Study

Questionnaire for MPs and other stakeholders

Name of respondent: _____

Contact information: _____

Name of the institution / organisation: _____

Type of institution / organisation: _____

Function within the institution / organisation: _____

Geographical area of intervention: _____

Date and place: _____

V. Knowledge of the International Criminal Court

21. What do you know about the Rome Statute and the International Criminal Court?
e) When was the ICC created and what is its legal basis?

f) Who can be tried before the ICC (jurisdiction)?

22. How do you come to know about the ICC?

VI. Knowledge of the Rome Statute System:

23. What do you understand by the principle of complementarity as described under the Rome Statute?

- a) The ICC and National Court can exercise concurrent jurisdiction over a case.
- b) The ICC can only act if a state is unable or unwilling to exercise jurisdiction over a case
- c) National Courts can exercise jurisdiction only if the ICC is unable and unwilling to prosecute

24. Has Nepal ratified the Rome Statute?

- c) Yes or no? _____
- d) What are the necessary measures to be taken in order to overcome those obstacles to ratification?

25. Has Nepal adopted any legislation related to the crimes of war, crimes against humanity and genocide?

- c) Yes or no? _____
- d) If yes, which court has jurisdiction?

26. Are there cases of international crimes in Nepal that could be tried before domestic jurisdictions?

- c) Yes or no? _____
- d) If yes, name which ones and justify your response.

27. Can the International Criminal Court have jurisdiction for crimes committed before the ratification of the Rome Statute by Nepal?

VII. Identification of needs:

28. a) What is your level of knowledge and comprehension of international criminal law?

- Bad Average Good Excellent

b) If your answer to the above is *bad* or *average*, which areas would you like to improve on? What would you like to learn about?

29. Have you ever participated in activities aimed at the promotion of the ratification of the Rome Statute?

- c) Yes /no? _____
d) If so, specify: What type of activities? In what capacity (trainer / participant / moderator)? Who organised the activity? The main objective of the training? The topics dealt with? What were the socio-professional categories of the beneficiaries? Strengths and weaknesses of the training activity?

30. Which are the areas of the country where training activities should take place?

VIII. Expectations

31. What are your expectations and needs in the area of justice linked to international crimes?

32. Do you trust the ICC will fulfill these expectations? Why?

33. Do you trust the justice system of Nepal will fulfill these expectations? Why?

34. What are the challenges and opportunities in relation to the prosecution of human rights abuses by the Nepalese justice system?

35. Do you know any NGOs (international and national) and other institutions that are active in this area in Nepal?

- c) Yes / No _____
- d) If so, which are the main organisations and what activities are they involved in?

ANNEX 3. TERMS OF REFERENCE

TERMS OF REFERENCE – BASELINE STUDY

PROJECT: “*Promoting the Rome Statute System and enhancing the effectiveness of the ICC*”

NEPAL

I. INTRODUCTION

Avocats Sans Frontières (ASF) is a non-governmental organization with a mission to contribute to the building of just and equitable societies where the law is at the service of most vulnerable groups and individuals. It has permanent missions in Burundi, Rwanda, Democratic Republic of the Congo, Uganda and Nepal, and implements projects in Israel/Palestine, East Timor and in Colombia, in partnership with its partner ASF Canada.

ASF is actively engaged in support of the effective functioning and independence of the Court through advocacy activities, regular consultations and research and publications in relation to the ICC and international criminal law. Since 2005, it has been implementing an integrated project in the DRC involving advocacy for the enactment of implementation legislation of the Rome Statute, capacity building, assistance and legal representation to victims wishing to participate in proceedings before the ICC or before national courts but also legal aid to indigent defendants in the DRC.

ASF has launched the global project entitled *Promoting the Rome Statute System and enhancing the effectiveness of the ICC*, mainly thanks to the financial support of the European Union. The objective of the project is to promote the effectiveness of the system established by the Rome Statute and of the ICC and thereby contribute to a greater accountability for gross human rights violations and redress for victims.

The principal target countries in the project are the Democratic Republic of the Congo, Uganda, Burundi, Colombia, East Timor and Nepal. Burundi, Uganda and Colombia will additionally serve as centers for activities at the regional levels involving French and English Speaking Lawyers and for lawyers from Latin America, respectively. Lawyers from countries in the respective regions, including Chad, Guinea, Kenya, Zimbabwe and Guatemala would be able to participate in the regional networks and workshops to be organised in the aforementioned countries.

The activities envisaged for Nepal are aimed at reinforcing the capacity of legal professionals and support advocacy efforts for the ratification of the Rome Statute and the enactment of appropriate national legislation. The specific activities consist of training workshops for lawyers on the Rome Statute and on international Criminal Law, initiate a loose national network of lawyers and provide technical support for advocacy efforts of the network and other civil society actors.

In preparation for the launch of the project activities, ASF has conducted an informal survey aimed at identifying the role, needs and priorities of the legal profession in Nepal through questionnaires completed by members of different bar associations. ASF seeks to hire a consultant in order to complement the survey with informal consultations with other stakeholders including civil society, representatives of the justice sector and parliamentarians and conduct a preliminary analysis of the data.

II. OBJECTIVES :

- Develop an overview of legislative and/or judicial developments in relation to the Rome Statute.
- Identify the legislative reforms that may be necessary in the areas of the administration of justice and to meet Nepal's international obligations in the human rights field.
- Identify the national and international actors involved in the capacity-building efforts, awareness raising and advocacy activities in relation to the ratification of the Rome Statute, the fight against impunity for the most serious crimes and making reparations available for victims.
- Identify the strengths and weakness of past activities and future plans.
- Incorporate the results of the analysis in a report to be discussed in during a consultation meeting with stakeholder and target groups to be organised.
- Use the final results of the study to draw up bench marks and make adjustments, if necessary, to existing plans and strategies for implementation of specific activities.

III. METHODOLOGY:

The baseline will be conducted on the basis of:

- Documentary analysis of publications and relevant national legislation or draft legislation.
- Interviews and meetings with the main actors in this field such as NGOs, justice national experts, justice sector officials, parliamentarians and international actors.
- Preliminary analysis of the surveys completed by legal professionals

IV. OUTPUTS

- A proposal describing the methodology to be used including the framework for the selection of respondents and a calendar (to be approved by the HoM/PrCo)
- Prepare a preliminary report and a final report within the time line incorporating the feedbacks from the Project and Regional Co-ordinators. The final report must include:
 - Recommendations on needs and priorities of the target groups
 - Recommendations principal challenges to the implementation of the activities.
 - Complete collection of data (electronic and hard copies) obtained through surveys.

ANNEX 4. NUMBER OF ACTIVITIES

National Coalition for the International Criminal Court (NCICC) since its establishment in 2001, has alone and in association with other like-minded NGOs – national, regional and international NGOs and coalitions has been campaigning for the ratification of the Rome Statute of the International Criminal Court. The campaign has taken momentum after the landmark decision of the House of Representatives (HoR). The campaign aims at raising awareness among the people, media, NGOs, political parties and other stake holders and engaging with the government and parliamentarians to take immediate decision to accede the Statute. The campaign also aims at establishing cooperation with the international initiatives for the accession to ICC by the Nepal Government.

National initiatives

2001

- 3-4 November: National Consultation on the ICC (Asian Network for the ICC (ANICC) and INSEC)

2002

- 6 June: Application to the NHRC requesting facilitate the government to ratify the Statute

2003

- 7 January: A session on ICC during INSEC Study Session
- 1 July: Interaction programme on "International Criminal Court and Human Rights: Nepalese Perspective"
- 17 July: Workshop on the ICC

2004

- 1 July : Interaction on the ICC

2005

- June: Special issue of INFORMAL (INSEC publication)
- Press Releases and memorandum in various occasions

Post April Revival: Lobby/Advocacy and Awareness: Engaging with HRDs, Political Parties and Parliamentarians

2006

- 24 April: Letter to the parliamentarians to be party to international human rights and humanitarian law treaties, including the Rome Statute
- 16 July : Publication of a booklet on the ICC
- 17 July : Sit-in programme demanding accession to the Rome Statute
- 17 July: Memorandum to Speaker of House of Representatives (HoR)
- 23 July: Discussion with Members of Parliament concerning need of accession to the Statute
- 6 August: Re-print of the booklet on the ICC
- August: Interaction on the ICC in Five Development Regions of Nepal
- 15-16 August: Facilitate parliamentarians attend "Asia-Pacific Parliamentarians' Consultation on the ICC" by PGA, the Philippines
- 27 August: Launching of Nepal Campaign Website
- August: Joined the Universal Ratification Campaign on Nepal (CICC)
- 2 November: Workshop on Transitional Justice; discussion on "The International Criminal Court and its Relevancy in the context of Post Janandolan-II in Nepal" (ICHR and INSEC)
- 3 November: Discussion with leaders of NC, CPN-UML and CPN-Maoist (Irish Centre for Human Rights (ICHR) and INSEC)
- 7 November: Meeting with Parliamentarians on "The Treaty of Rome and Issues of Accession by Nepal" (INSEC and Foreign Affairs and Human Rights Committee of the HoR; technical assistance of ICRC)
- 10 December: Signature Campaign
- 2 November: Workshop on Transitional Justice; discussion on "The International Criminal Court and its Relevancy in the context of Post Janandolan-II in Nepal" (ICHR and INSEC)
- 3 November: Discussion with leaders of NC, CPN-UML and CPN-Maoist (ICHR and INSEC)
- 7 November: Meeting with Parliamentarians on "The Treaty of Rome and Issues of Accession by Nepal" (INSEC and Foreign Affairs and Human Rights Committee of the HoR; technical assistance of ICRC)

- 10 December: Signature Campaign
- 2007
- 1 March: Sit-in and demonstration
 - 1 March: Delegation/Memorandum to the Speaker of the Interim Legislature Parliament
 - 14 April -14 May: Launched a New Year Campaign
 - 1-7 July: one week ICC Campaign (Delegation to PM, Interaction, Launch Nepali version of Rome Statute, 2 July Meeting with leaders of NC, CPN-UML and NC-D, 3 July Meeting with Minister for Foreign Affairs, 4 July Meeting with leaders of ULF, 5 July Meeting with leaders of Nepal Workers and Peasants Party (NWPP) and Nepal Sad Havana Party-Anandidevi (NSP-A), 6 July Meeting with leaders of People's Front Nepal (PFN), 7 July Interaction, Public Ratification of Rome Statute, Radio programme)
- 2008
- June: Launch a year long campaign against Impunity
 - July: Sit-in and Signature collection in five regional headquarters
 - July: Public Hearing on the ICC
- 2009
- 21 March: Workshop on the accession and the domestication of the Rome Statute of the ICC in Nepalgunj, Jointly with International Commission of Jurists and INSEC
 - 28 March : Workshop on the accession and the domestication of the Rome Statute of the ICC in Pokhara, Jointly with International Commission of Jurists and INSEC
 - 17 July: Interaction on the accession to the Rome Statute and Ending Impunity, Nepalgunj
- 2010
- January: Publication of the revision of the existing criminal laws with reference to the Rome Statute of the ICC, National Judicial Academy and INSEC
 - February: Discussion with stakeholders on Significance of Accession to the Rome Statute before ICC Review Conference
 - April: Discussion with key stakeholders on accession to the Rome Statute
 - September: Production of documentary entitled "Acceded to the Rome Statute to end Impunity"
- 2011
- January: Urged to ratify Rome Statute of the ICC during the review of Nepal under the Universal Periodic Review of Human Rights Council
 - February : Joint program at regional level
 - June: Delivered statement at the 17th session of Human Rights Council while adopting the outcome document on Nepal
 - February-May, Revision of Existing criminal laws and judicial system on the basis of standards set in Rome Statute
 - July, Launching of book entitled "Permanent International Criminal Court: Addressing impunity at the international level: From Nuremberg to the Hague"
 - July, Launching of book entitled "National Preparation for Implementation of Rome Statute"

International Delegation and Experts' Meeting on the ICC

- 2002
- 12-15 May: International Lobby Team to Nepal (CICC, ANICC, FORUM-ASIA, INSEC)
- 2006
- 25-27 August: Asian Delegation for the ICC (CICC, ANICC, FORUM-ASIA, NCICC/INSEC)
 - 26 August: Experts' Meeting on the ICC (FORUM-ASIA and INSEC)
 - 27 August: Press Conference on the Asian Delegation and Experts' Meeting on the ICC (FORUM-ASIA and INSEC)
- 2007
- September: Joint lobby mission with AI and CICC
- 2009
- 3 March: National workshop and delegation, jointly with CICC
- 2010
- 9 February: Discussion program on significance of accession to the Rome Statute by Nepal before ICC Review Conference

- 31 August: Discussion program on obstacles on the accession of the Rome Statute in Kantipur Television
- December: Development of 21 minutes documentary on the Nepal's initiations to the Accession

Engaging with international stakeholders

2006

- 23 November – 1 December: INSEC General Secretary at NGO Forums during the 5th Session of the Assembly of States Parties (ASP), the Hague
- 1 December: Open letter to the Parliamentarians for Global Action (PGA) on the occasion of its Fourth Annual Session, 4-5 December 2006, Tokyo

2007

- 8 October: Open letter to the 117th Assembly of the Inter-Parliamentary Union

2008

- 15 November: Delivered statement at the 7th Assembly of the State Party (ASP) of the ICC, the Hague
- 18 November: Submitted a letter to EU presidency of the ICC during the 7th ASP of the ICC, the Hague

EU initiatives to push agenda

2007

- 8 November: EU urges Government action on International Criminal Court

2009

- 16 December: The German Ambassador to Nepal carried out an ICC demarche in Kathmandu, accompanied by the Head of the EU-Delegation and the French Ambassador representing the incoming Presidency, calling for Nepal's rapid accession to the Rome Statute.

2010

- 25 February: EU asked Nepal to accede to the Rome Statute of International Criminal Court (ICC) before May, the date for the court's first review meeting.

2011

- UN member states during the review of Nepal under the Universal Periodic Review urged Nepal to accede to the Rome Statute

Response from Government, NHRC, Political Parties, Parliamentarians

2002

- May: Minister and leaders of political parties positively responded the International Delegation
- 2002-2006: Political leaders expressed commitment for the ICC in the programmes organized in various occasions

2006

- 17 July: Speaker of the HoR promised support demands for accession to the Rome Statute
- 25 July : HoR unanimously adopted a Commitment Proposal directing the government to accede to the Rome Statute
- 25 – 27 August: Prime Minister, Deputy Prime Minister & Minister for Foreign Affairs, Speaker of HoR, leaders of political parties positively responded the Asian Delegation for the ICC
- 18 October: Formation of inter-ministerial Task Force to assess the impacts of Nepal becoming party to the Rome Statute of the ICC
- 14 December: Task force submitted its report to the government
- 14 December: Deputy Prime Minister and Minister for Foreign Affairs assured that the government would soon begin the process required to become a party to the Statute

2007

- March: Speaker of Interim Legislature-parliament expressed commitments to push forward the agenda of accession to the Statute; Chief whips of political parties also positively responded the agenda
- 6 August: NHRC asked Government to Ratify Rome Statute

2009

- 11 February: FM of Maoist Government, Honorable Uprendra Yadav submitted an agenda at the cabinet for immediate ratification of the Rome Statute
- 5 March: Chairperson of CA expressed hope on submission of proposal by government, for final endorsement in upcoming winter session
- 26 July: FM Sujata Koirala expressed commitment to start the process for Nepal to ratify the Rome Statute.
- 2 December: Deputy Prime Minister and Foreign Minister Sujata Koirala assured the President of the ICC Justice Song to initiate the process of accession soon
- 3 December: President of United CPN Maoist, Pushpa Kamal Dahal assured President of the ICC, Justice Song that he will initiate dialogue with other parties for accession, after getting full assurance that ICC is not retroactive
- 16 December: Deputy Prime Minister and Foreign Minister Sujata Koirala promised to talk to those involved in the domestic decision making process, in particular to the Prime Minister and the representatives of the political parties, in order to convince them to accede to the Rome Statute.

2010

- February: FM expressed commitment to take the proposal of ratification to the High Level Political Mechanism
- February-March: Interaction on International Criminal in five development regions jointly with ICJ
- April: Office of the Prime Minister hold a discussion with line ministries and security agencies on accession to the Rome Statute
- July: Celebration of International Justice Day in five development regions

2011

- June: Government in its action plan for the implementation of the UPR Recommendations, listed accession to the Rome Statute as one of the major agenda
- June: During the adoption of the UPR outcome, government assured international community to ratify Rome Statute
- July : Interaction on Impunity and non-implementation of Court Rulings
- July: Launching and dissemination of book entitled "National Preparation on Implementation of Rome Statute of the International Criminal Court"
- July: Submission of Memorandum to the Legislature parliament requesting submission of follow-up proposal to the government for the accession of Rome Statute
- September: Training to the Government attorneys and Defense lawyers on the International Criminal Court
- December: Baseline survey on ICC